

SOUTH AFRICA / JUDGMENT

Ascension Properties Limited v Mutodo Properties Proprietary Limited in respect of Jorissen Place (LM231Feb16) [2016] ZACT 20 (23 March 2016)

[2016] ZACT 20

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Fiona Tregenna, Andiswa Ndoni

CASE / FILE NUMBER

LM231Feb16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM231Feb16

In the matter between:

ASCENSION PROPERTIES LIMITED

Primary Acquiring Firm

and

MUTODO PROPERTIES PROPRIETARY LIMITED

IN RESPECT OF JORISSEN PLACE

Primary Target Firm

Panel

: Andreas Wessels (Presiding Member)

: Fiona Tregenna (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 09 March 2016

Order Issued on

: 09 March 2016

Reasons

Issued on : 23 March 2016

Reasons

for Decision

Approval

- [1] On 09 March 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Ascension Properties

Limited and Mutodo Properties Proprietary Limited in respect of Jorissen Place.

- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Ascension Properties Limited ("Ascension Properties"), a firm incorporated in terms of the laws of the Republic of South Africa.
- [4] Ascension Properties is listed on the Johannesburg Stock Exchange Limited ("JSE"). Ascension Properties is controlled by Rebosis Property Fund Limited ("Rebosis"), which holds 59% of the entire issued share capital of Ascension Properties. The remainder of the issued share capital of Ascension Properties is held by a number of shareholders, who do not in any way influence the management or business of Ascension Properties.
- [5] Ascension Properties, Rebosis and their subsidiaries will hereinafter be collectively referred to as the "Acquiring Group".

Primary target firm

- [6] The primary target firm is Mutodo Properties Proprietary Limited ("Mutodo Properties"), in respect of a letting enterprise

known as Jorissen Place ("Target Property").

- [7] Mutodo Properties is controlled by Simeka Capital Holdings Proprietary Limited as to 80% of its shares. The remaining 20% of the issued share capital in Mutodo Properties is owned by Makhado Nesengani.

Proposed transaction and rationale

- [8] The Acquiring Group intends to acquire the Target Property, Jorissen Place, from Mutodo Properties, as a going concern. Upon

implementation of the proposed transaction, the Acquiring Group will have sole control of the Target Property.

- [9] Ascension Properties submitted that its strategy is to hold centrally located commercial office buildings in South Africa with a strong focus towards government and other empowerment sensitive tenants. The Acquiring Group has identified Jorissen Place as a suitable building for this purpose.
- [10] Mutodo Properties submitted that it intends to dispose of Jorissen Place in order to raise capital for future developments and acquisitions of assets.

Impact on competition

- [11] The Competition Commission ("Commission") found that the Acquiring Group owns rentable Grade A offices in the nodes identified as the Johannesburg CBD/Marshalltown and Roodepoort. The Target Property, Jorissen Place, is located in the Braamfontein node and comprises of rentable office and retail space. Thus based only on the relevant node there is no geographical overlap between the properties of the merging parties. The Commission however also considered Grade A and Grade B office properties in a broader geographical area encompassing Braamfontein, the Johannesburg CBD/Marshalltown, Parktown, Newtown and Milpark.
- [12] With regard to retail space, the Commission considered the market for rentable space in convenience centres within a 10 km radius of the Target Property.
- [13] The Commission found the following in relation to each of the above-mentioned potential markets:
 - 1. In the market for the provision of rentable space in Grade A office properties within the Braamfontein and surrounding nodes, the merged entity will have an estimated market share of less than 10%.
 - 2. In the market for the provision of rentable space in Grade A and Grade B office properties within the Braamfontein and surrounding nodes, the merged entity will have an estimated market share of less than 10%.
 - 3. In the market for the provision of rentable space in convenience centres within a 10 km radius of the Target Property, the merged entity will have an estimated market share of less than 5%.
- [14] Within each potential market, the Commission found that the merged entity is a relatively small player and that it would continue to face significant competition constraints from competing properties. In light of this, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[16] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment. [1]

[17] The proposed transaction further raises no other public interest concerns.

Conclusion

[18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

23 March 2016

DATE

Mr Anareas Wessels

Prof Fiona Tregenna and Ms Andiswa Ndoni concurring

Tribunal Researcher: Busisiwe Masina

For the merging parties: Nick Altini of Baker & McKenzie

For the Commission: Reabetswe Molotsi

[1] See merger record inter alia page 10.

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